from the State. The original ones were made in 1884 and 1885 for twenty years. In 1903, 1905 and 1912 they were what is called reassigned to the plaintiff by what we understand to have been new leases, by statute to be deemed continuations of the original leases. In 1896 the City of Newport News was incorporated with the grant of the right to build sewers, which the City built in the manner complained of. The grant, coupled with Acts of 1908, c. 349, pp. 623, 624, authorizes the present discharge through Salter's Creek into the tide waters of Hampton Roads, with the effect alleged. By § 2137 of the Code of Virginia it is provided that so long as a lessee of oyster beds continues to pay the rent reserved "he shall have the exclusive right to occupy said land for a period of twenty years, subject to such rights, if any, as any other person or persons may previously have acquired." By § 2137a, originally Act of March 5, 1894, c. 743, § 10 (2), Acts 1893–4 pp. 840, 847, while he pays rent as required "the state will guarantee the absolute right to the renter to continue to use and occupy the same for the period of twenty years the renter acquired." The bill alleges that if the statutes purport to authorize the destruction of the plaintiff's oysters they are contrary to the Constitution of the United States and specifically to the Fourteenth Amendment. In the assignment of errors to the Supreme Court of Appeals the statutes are said also to violate the contract clause. Article I, § 10. The jurisdiction of this court is clear.

The fundamental question as to the rights of holders of land under tide waters does not present the conflict of two vitally important interests that exists with regard to fresh water streams. There the needs of water supply and of drainage compete. *Missouri* v. *Illinois*, 200 U. S. 496, 521, 522. The ocean hitherto has been treated as open to the discharge of sewage from the cities upon its shores. Whatever science may accomplish in the future

we are not aware that it yet has discovered any generally accepted way of avoiding the practical necessity of so using the great natural purifying basin. Unless precluded by some right of a neighboring State, such as is not in question here, or by some act of its own, or of the United States, clearly a State may authorize a city to empty its drains into the sea. Such at least would be its power unless it should create a nuisance that so seriously interfered with private property as to infringe constitutional rights. And we apprehend that the mere ownership of a tract of land under the salt water would not be enough of itself to give a right to prevent the fouling of the water as supposed. The ownership of such land, as distinguished from the shore, would be subject to the natural uses of the water. So much may be accepted from the decisions in Virginia and elsewhere as established law. *Hampton* v. *Watson*, 119 Virginia, 95; *Haskell* v. *New Bedford*, 108 Massachusetts, 208, 214; *Marcus Sayre Co.* v. *Newark*, 60 N. J. Eq. 361; *Illinois Central R. R. Co.* v. *Illinois*, 146 U. S. 387, 459.

The question before us then narrows itself to whether the State has done any act that precludes it from exercising what otherwise would be its powers. On that issue we shall not inquire more curiously than did the Supreme Court of Appeals into the statutory warrant for the leases, or go into relative dates, but shall assume, for the purposes of decision, that the plaintiff is a lessee and is entitled to the benefit of the clauses that we have quoted from the Code. But we agree with the court below that when land is let under the water of Hampton Roads, even though let for oyster beds, the lessee must be held to take the risk of the pollution of the water. It cannot be supposed that for a dollar an acre, the rent mentioned in the Code, or whatever other sum the plaintiff paid, he acquired a property superior to that risk, or that by the mere making of the lease, the State contracted, if it

could, against using its legislative power to sanction one of the very most important public uses of water already partly polluted, and in the vicinity of half a dozen cities and towns to which that water obviously furnished the natural place of discharge. See *Illinois Central R. R. Co.* v. *Illinois*, 146 U. S. 387. *Trimble* v. *Seattle*, 231 U. S. 683. The case is not changed by the guaranty in § 2137a. That is directed to the possession of the land, not to the quality of the water. It is unnecessary to cite the cases that have affirmed so frequently that the construction of public grants must be very strict.

The constitution of Virginia, like some others, requires compensation for property taken or damaged for public use. Const. 1902, § 58. But this seems to be construed by the dissenting judge as well as by the court below as not including damage like this, which would not have been a wrong even without the act of the legislature. It is a question that has been subject to much debate. See for example, *Caledonian Railway* v. *Walker's Trustees*, 7 App. Cas. 259, 293, *et seq.* *Taft* v. *Commonwealth*, 158 Massachusetts, 526, 548. *Transportation Co.* v. *Chicago*, 99 U. S. 635, 642. But upon that point we follow the Supreme Court of the State.

Decree affirmed.